

STATE OF MICHIGAN
Michigan Department of Transportation
Contract Services Division
425 W. Ottawa - P.O. Box 30050
LANSING, MI 48909

CONTRACT NO. 591B5500246

between

THE STATE OF MICHIGAN

and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Bay County Lawn, Inc. DBA Village Green 1616 Tech Dr Bay City, MI 48706	Robert Walsh	<u>vgreen2222@aol.com</u>
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(989) 671-2300	23-82215270 / 000

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER:	MDOT	Bryan Schnetzler	(989) 356-2231	<u>SchnetzlerB@michigan.gov</u>
CONTRACT ADMINISTRATOR:	MDOT	Mark Morrison	(517) 241-2343	<u>Morrisonm@michigan.gov</u>

CONTRACT SUMMARY:			
DESCRIPTION: North Region Roadside Chemical Spraying Services for MDOT			
INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
Two Years	June 15, 2015	June 14, 2017	N/A
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
Net 30 Days	Delivered	N/A	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MIDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input checked="" type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
MINIMUM DELIVERY REQUIREMENTS:			
N/A			
MISCELLANEOUS INFORMATION:			
N/A			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:		\$152,552.08	

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the solicitation #0059115B0004981.

FOR THE CONTRACTOR:

Bay County Lawn, Inc. DBA Village Green

Firm Name

Authorized Agent Signature

Authorized Agent (Print or Type)

Date

FOR THE STATE:

Signature

Demetrius A. Parker, P.E., Administrator

Name/Title

MDOT Contract Services Division

Enter Name of Agency

Date

North Region Roadside Spraying on Limited Access Highways

EXHIBIT A STATEMENT OF WORK CONTRACT ACTIVITIES

This is a Contract to perform Liquid Chemical Weed control applications on limited access highway sections in the Michigan Department of Transportation's (MDOT) North. The work shall be done in accordance with all the terms of this Contract, including the supplemental specifications contained within this Contract.

Requirements

1. Requirements

1.1 Scope of Work

The Contractor must provide all personnel, equipment, tools, materials, supervision, and other items and services, including traffic control equipment and devices, necessary to perform the services as described in this document.

The services requested are identified herein and during the hours specified by the Program Manager. All work locations are provided in attachments of this contract.

All work shall be done in accordance with all regulations governing the state agency wherein the work is to be performed and with minimum possible interference with the proper functioning of the activities of that state agency.

Village Green shall uphold the conditions of the contract as set forth in this document. Village Green will be using 2 tanker trucks with Raven injector units. Both trucks used for this contract will be equipped with Type C lighted arrow boards. There will be a supervisor on the project at all times.

1.2 Work and Deliverable

Contractor must provide Deliverables/Services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:

A. Description of Work:

Days/Hours of Operation

All work shall be conducted during day time hours only.

No work shall be allowed on weekends unless prior approval is obtained from the Program Manager. No work shall be allowed during the Memorial Day, July 4th, or Labor Day holiday periods, as defined by the Program Manager.

The work shall be suspended by the Program Manager at any time traffic is being unduly hampered or delayed by the work in progress. Hours where traffic would be expected to be unduly hampered in general are from 6:00 a.m. to 9:00 a.m. and from 3:00 p.m. to 6:00 p.m. weekdays. These hours may be adjusted as directed by the Program Manager.

Additional work hour restrictions for this Contract may be listed below. They may include but are not limited to the following locations:

No mainline routes shall be treated during the Adopt-A-Highway pickup dates. These dates change from year to year. The Contractor is responsible for contacting the Program Manager annually for dates.

During the Memorial and Labor Day holidays and during other holiday periods as defined by the Program Manager, the Contractor shall have all crews off the road by 3:00 p.m. on Friday and remain off the road until normal starting time on Tuesday or other day as applicable.

No work shall be done on Northbound I-75, US-127 or US-131 on Fridays or Saturdays. No work shall be done on Southbound I-75, US-127 or US-131 on Sundays or Mondays.

The Contractor shall furnish and place, without extra compensation, all necessary warning and directional devices to maintain traffic. Traffic devices and materials should be included in the bid for each line item they will be used for.

Traffic shall be allowed to keep moving at all times and the spraying equipment shall be operated in accordance with this proposal.

If the Contractor is found to be performing work during specific hours of restriction, the Program Manager may withhold payment of the materials placed in the time restricted area.

Weed Control in Roadside Turf Areas

The work shall consist of the Contractor making two chemical weed spray applications each year, one each in the spring and fall during the contract period on the specified routes as indicated in Attachment 1, North Region Spray Contract Location Information. In order to reduce the weeds from becoming resistant to a formulation the Contractor shall have a different herbicide formulation for the spring and fall applications. The spring application shall be completed between May 1 and June 28. The fall application shall be completed between the Tuesday after Labor Day and September 30th otherwise directed by the Program Manager. The Contractor shall furnish and apply herbicide(s) to control broad leafed weeds on the specified highway routes. It shall be the Contractor's responsibility to select herbicide(s) and an application rate which will control the broad leafed weeds present on the specified highway sections at the time of the application.

NOTE: All herbicides used in any of the applications described above shall be registered for use on highway rights-of-way by the Michigan Department of Agriculture and Rural Development (MDARD) and the United States Environmental Protection Agency (EPA). No herbicide shall be used which will cause damage to the turf areas. No restricted use herbicides shall be used on this contract. A drift control agent shall be used in all spraying operations. Samples of the products or spray emulsion may be taken by MDOT throughout the duration of the contract, at the discretion of the Program Manager.

B. Methods of Treatment:

Weed Control on Roadside Turf Areas

All designated areas shall be treated unless excluded in writing by the Program Manager. The area to be sprayed will be a 20 foot swath adjacent to the turf edge of both the outside and the median shoulder of divided highways. The median will be treated from both sides to insure complete coverage. A 20 foot swath will be sprayed adjacent to both shoulders on all ramps within the described sections. Depressed freeway areas (both mainline and ramps) will require that a variable width application be made where steep banks, woody landscape

vegetation or narrow turf areas prohibit the specified 20 feet minimum spray swath from being achieved. Application widths may vary between 10 and 20 feet.

Turf areas behind all guardrail sections will also be treated on all roads.

C. Maintaining Traffic

All traffic control devices and their usage shall conform to the Michigan Manual of Uniform Traffic Control Devices (MMUTCD), 2011 edition as revised, and as specified herein. Traffic control devices are required to be NCHRP 350 compliant. These materials will be inspected and certification that these materials conform to the required specifications will be required by the Program Manager prior to starting work.

The cost of all work and devices required for maintaining traffic will be included in the contract unit price for each bid item. All equipment and materials not in use, shall, unless otherwise approved by the Program Manager, be parked or stored off the highway rights-of-way. Refer to Maintaining Traffic Typical in this proposal.

Particular attention will be required to avoid interfering with the traveling public during the rush hours in high density traffic areas. The Program Manager will determine where and when rush hour precautions will be observed.

All spraying operations will be performed in the direction of traffic and off the traffic lanes of the roadway with the exception of curbed sections. If the spray vehicle cannot operate completely out of the traffic lane, the Contractor shall supply a shadow vehicle in accordance with the 2012 MDOT Standard Specifications for Construction and the 2011 Michigan Manual of Uniform Traffic Control Devices (MMUTCD). All operations must comply with the specifications.

D. Equipment

The Contractor shall furnish, operate and maintain suitable and adequate equipment necessary to perform the spraying operations in an approved workman like manner without hindrance or damage to the roadside. The Contractor shall have enough satisfactory equipment and personnel so that the project can be completed in the time specified under normal seasonal weather conditions.

Type of Equipment

Prior to the contract award, all equipment necessary to perform the contract shall be inspected and approved by the Program Manager. The Contractor shall be required to demonstrate that his/her equipment and operators are capable of applying an even and controlled application within the specified target areas. Equipment used for guardrail, roadside turf and State facilities weed control, must be capable of spraying a variable width pattern. Spray widths for guardrail applications will range between 2 and 6 feet. Spray widths for weed spray applications will be 20 feet. Spray widths for facilities shall be based on ground conditions.

Roadside turf applications are to be made by nozzles that are designed to minimize potential drift. All spray equipment will be fitted with a chemical injection system, which dispenses pesticide at a specified rate into the water stream within the sprayer pipeline. The main tank of the sprayer holds clean water only. Electronic spray controllers, which adjust material flow rate as the ground speed changes, shall be used to control all material application. The controller shall display, when selected, the ground speed, width of application, rate of application in gallons per acre, cumulative distance traveled, cumulative

area covered and total gallons of material applied. Data to be recorded only when applicator is spraying. The controller shall be easily calibrated and calibration shall be maintained and verified daily.

All material supply lines and booms shall have instantaneous shutoff valves immediately accessible to the spray applicator from his operating position. Under no circumstances shall the spray vehicle exceed 12 miles/hr while spraying herbicides. All trucks shall be equipped with anti-siphon devices when loading water. The filler hose shall not come into contact with the water in the tank.

Equipment Safety

All equipment shall meet all federal, state, and local safety requirements.

Each vehicle used in the spraying operation for Roadside Weed Spraying and Guardrail Spraying shall be equipped with the following:

1. A commercial-type rotating beacon, or strobe light plainly visible from all directions. Beacon or strobe lights shall be amber in color, have a minimum of 32-candle power output, and flash 50 to 60 times per minute.
2. A lighted arrow, Type C used in the caution mode as specified in Section 812 of the 2003 MDOT Standard Specifications for Construction, shall be mounted on the rear of each spray vehicle.
3. Where a shadow vehicle is utilized (see Maintaining Traffic section), the following lighted arrow and vehicle mounted sign configuration will be required on the shadow vehicle:

Mobile Operation on Multilane Road

Lighted Arrow operated in the arrow mode (left or right) only, when occupying a portion of the traveled roadway. The caution bar mode shall be used when operating outside the traveled roadway (shoulder). A "Road Work Ahead" sign shall be mounted on the rear of the vehicle so as not to obscure the arrow display.

Mobile Operation on Two-Lane Road

Lighted Arrow operated in the caution bar mode only, with a "Yield To Oncoming Traffic" sign mounted on the rear of the vehicle so as not to obscure the arrow display

When traveling between work locations or when the contractor is not spraying material, all flashing bars and any other devices used to warn or advise the motorist shall be removed, covered or turned off.

E. Damages

The Contractor shall at his/her own expense, preserve and protect from injury all property, either public or private, along and adjacent to the roadway, and he/she shall be responsible for and repair, at his/her own expense, any and all damage and injury thereto, arising out of, or in consequence of any act or omission of the Contractor or his/her employees in the performance of the work covered by the contract prior to completion and acceptance thereof.

Damage to the turf or landscape plant material caused by any action of the Contractor including, but not limited to: (1) drift, leaching or lateral movement of the herbicide application

from the target area or (2) rutting, scraping or gouging from equipment, shall be repaired/replaced as specified herein.

Turf damage repairs shall be made by the Contractor in accordance with Section 816 of the MDOT 2012 Standard Specifications for Construction and as herein specified. Seeding will only be allowed during the seasonal limitation periods.

All landscape plant material damaged by the Contractor shall be replaced in kind according to Section 815 of the MDOT 2012 Standard Specifications for Construction and as herein specified. Planting may only be done in the spring and prior to May 10. All replacement plants must be maintained during the specified establishment period.

All repairs shall be made to the satisfaction of the Program Manager. Payment for work performed may be withheld until satisfactory repairs are made. If repairs are made by MDOT, the actual replacement costs including all labor, equipment, materials, and fringe benefits shall be charged to the Contractor.

F. Deletion of Work

The State of Michigan may delete all or any portions of the Contract that cannot be completed in conformity with the progress schedule or a reasonable extension. The State of Michigan may also delete portions of the Contract that show no need for spraying due to growing conditions. Areas may be deleted due to other construction activity. If the Contract is terminated, or portions thereof deleted, payment will be made for all satisfactorily completed work at the Contract unit price.

G. Default

In addition to the Deletion of Work provision, this Contract may be terminated due to default in accordance with the Standard Contract Terms. If inspection by the Program Manager or his/her designee reveals that the Contractor's work results in non-compliance with this Contract:

The Program Manager at the time of the first occurrence of noncompliance shall notify the Contractor and review the condition. If the condition poses a health or safety hazard or represents a significant deviation from the progress schedule or spraying specifications, the Program Manager will prepare a written Vendor Performance Report. The Contractor will be informed in writing of the corrective action required.

Should a second non-acceptable condition occur, subsequent to a previous Vendor Performance Report being filed, which would warrant a formal Vendor Performance, termination procedures will commence consistent with the Standard Contract Terms

Noncompliance includes but is not limited to:

1. Failure of the Contractor to start application work within one (1) week of the notification to start.
2. Failure of the Contractor to complete the number of acres or miles per day specified in the progress schedule submitted at the Pre-Maintenance Meeting and approved by the Program Manager.
3. Failure of the Contractor to make herbicide applications in accordance with any of the specifications defined above.

4. The State of Michigan reserves the right to bill the Contractor for any damages due to the default of the Contractor.

H. Coordinating Clause

Contracts for landscaping, mowing or other work may be in progress during the time of this Contract. Areas to be treated by weed spraying shall not be sprayed for 72 hours before mowing or 48 hours after mowing. Spraying operations may not be allowed the week of and the week prior to the Adopt-A-Highway pickups. These dates will be available to the Contractor previous to starting work. The Contractor shall coordinate his/her work activities with existing or future work performed by MDOT, through close coordination with the Program Manager. Application dates may be adjusted through mutual agreement between the Contractor and Program Manager when unusual conditions are experienced. Areas may be deleted due to construction activity.

2. Acceptance

2.1 Acceptance, Inspection and Testing

Weed Control in Roadside Turf Areas

The amount of chemical weed spraying will be measured in acres as specified in this proposal with the bid price per acre modified according to the degree of control (kill) achieved. A 90 percent or higher kill of each of the weed species present at the time of application will be considered a 100 percent achievement and 100 percent of the bid price per acre will be paid for the units completed. A 75 percent payment will be made if it is determined that between 75 and 90 percent of the species of each of the weed species present are killed.

A kill of less than 75 percent of each of the weed species of each present on a control section at the time of application will be considered as 0 percent achieved and no payment will be made. The degree of control (kill) will be determined by examining randomly selected plot 14-28 days following the completion of each application period. The plots will be approximately 20 feet in length and 20 feet the width of the sprayed swath. There will be a minimum of four and a maximum of eight plots on each control section. The percent kill on a control section will be determined by averaging all of the plots taken on that section.

A separate percentage kill will be calculated for each control section and accordingly a separate achievement percentage will be determined and applied to each control section.

When it is determined that the payment for a control section is less than 100%, the Program Manager may offer the Contractor the option of retreating the control section to improve the achievement percentage, if in the opinion of the Program Manager, the retreatment will accomplish the original goals and intent of the contract. The sections retreated will be inspected in the same manner as the initial treatment using a new set of randomly selected plots.

If re-treatment is granted by the Program Manager, all designated areas must be retreated within two (2) weeks of notification from the Program Manager. If the retreatment is not completed within the specified period, payment will be made based on the degree of control determined during the original inspection. No retreatment will be allowed for the fall application.

When work is completed and the achievement percentage agreed upon, after each application period, the amount of the payment will be determined by multiplying the unit price bid times the achievement percentage times the acres completed on each control section. The acres listed on the "Weed

Spraying Summary" will be accepted as the quantities used unless there has been an exclusion written by the Contract Administrator.

The quantities within these specifications will be the accepted quantities for this contract and any excluded areas will be calculated by the Contract Administrator using the same methods that were used when the original quantities were calculated.

The Program Manager will notify the Contractor of the dates and times of all inspections and the Contractor may accompany the Program Manager while inspections are being made. If the Contractor does not agree with the percentage kill determined by the Program Manager, the Contractor can request an inspection by a mutually agreed upon disinterested third party. A joint inspection including the Program Manager, the Contractor, and the third party will be scheduled. All expert fees and expenses charged by the third party will be agreed to before the inspection and will be shared equally by the Contractor and the Michigan Department of Transportation.

3. Staffing

Personnel

Contractor shall ensure that all personnel possesses and maintains any certificates or licenses. Proof shall be provided that all personnel are a "Licensed Commercial Applicator" in the State of Michigan. A complete listing of all certified commercial applicators is needed with corresponding MDA certification numbers and categories for those individuals applying herbicides as part of this contract.

MDOT must be notified immediately of any new pesticide applicators, hired by the Contractor, after the Kick-Off Meeting. Before any pesticide applications are made the applicator(s) must present a commercial pesticide applicators certification card and picture identification to the Program Manager for verification. The Contractor shall comply with all federal, state and local laws and regulations as specified in the 2012 Standard Specifications for Construction.

The State reserves the right to approve personnel for this project and to require replacement of personnel found to be unacceptable at any time during the project.

Contractor shall ensure that all work performed by personnel meets the requirements of this contract.

Contractor shall be responsible for repair, replacement, or cleanup as necessary due to carelessness or negligence on the part of the Contractor and its personnel.

Supervision

Contractor shall provide all supervision as may be necessary to oversee its personnel:

Contractor shall exercise all supervisory control and general control over all day-to-day operations of his/her employees, including control over all workers duties. At the conclusion of each service, the Contractor shall inspect the location for completion and performance quality of the required services. The Contractor shall also be responsible for payment of all wages to employees, taxes, and fringe benefits, sick leave, pension benefits, vacations, medical benefits, life insurance or unemployment compensation or the like. The Contractor shall discipline his/her employees, as needed, including firing and hiring.

The Program Manager may require that Contractor immediately remove any Contractual employee(s) from the agency's premises for just cause. The Contractor will assume any and all responsibilities relating to this removal. Any employee so removed may not be placed on another project without prior consent of the Program Manager.

The Program Manager shall make final determination of a Contractual employee's suitability for assignment to a specific location. Problems of this nature will be addressed with the Contractor Representative.

3.1 Contractor Representative

Village Green's President Robert Walsh and General Manager Brandon Walsh will be in charge of the contract.

Village Green shall keep all communications open between our company and the contract administrator.

3.2 Work Hours

Days/Hours of Operation

All work shall be conducted during day time hours only.

No work shall be allowed on weekends unless prior approval is obtained from the Program Manager. No work shall be allowed during the Memorial Day, July 4th, or Labor Day holiday periods, as defined by the Program Manager.

The work shall be suspended by the Program Manager at any time traffic is being unduly hampered or delayed by the work in progress. Hours where traffic would be expected to be unduly hampered in general are from 6:00 a.m. to 9:00 a.m. and from 3:00 p.m. to 6:00 p.m. weekdays. These hours may be adjusted as directed by the Program Manager.

Additional work hour restrictions for this contract may be listed below. They may include but are not limited to the following locations:

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During the Memorial and Labor Day holidays and during other holiday periods as defined by the Program Manager, the Contractor shall have all crews off the road by 3:00 p.m. on Friday and remain off the road until normal starting time on Tuesday or other day as applicable.

No work shall be done on Northbound I-75, US-127 or US-131 on Fridays or Saturdays.

No work shall be done on Southbound I-75, US-127 or US-131 on Sundays or Mondays.

The Contractor shall furnish and place, without extra compensation, all necessary warning and directional devices to maintain traffic. Traffic devices and materials should be included in the bid for each line item they will be used for.

Traffic shall be allowed to keep moving at all times and the spraying equipment shall be operated in accordance with this proposal.

If the Contractor is found to be performing work during specific hours of restriction, the Program Manager may withhold payment of the materials placed in the time restricted area.

3.3 Organizational Chart

The Contractor must provide an overall organizational chart that details staff members, by name and title.

4. Project Management

4.1 Project Plan Management

After the Contractor has been determined, a Kick-Off/Equipment Inspection Meeting with the Program Manager will be held at a location designated by the MDOT. The purpose of the meeting will be for the Contractor to present the following required detailed information to the Department for review prior to the start of the contract.

Prior to Contract Start Date, vendor shall provide:

Equipment list and any lease contracts indicating description, age, manufacturer, model and serial number of each piece. Equipment must meet or exceed all requirements defined under Section 1.2 D of this document. All equipment must be in the vendor's possession, available for use and fully operational, prior to the Kick Off Meeting.

The MDOT will visually inspect the entire Contractor's equipment at a location and date specified by the MDOT prior to the contract start date and at any time throughout the duration of this contract. Equipment failure will not constitute an acceptable reason for deviating from the progress schedule.

The Schedule of operations and- personnel work hours will be confirmed at the Kick-Off Meeting. The Contractor must be prepared to present the following:

1. Name(s) of supervisor, 24-hour contact telephone numbers, and best contact times.
2. Progress schedule listing locations where herbicide applications will occur including a schedule of acres or miles to be sprayed each day. The Department at the Kick- Off Meeting must approve this schedule. Adjustments to this schedule including any weather-related deviations must be approved by the Program Manger.
3. Safety Program, including traffic control plan.
4. Proof that the Contractor is a "Licensed Commercial Applicator" in the State of Michigan. A complete listing of certified commercial applications is needed with corresponding MDARD certification numbers and categories for those individuals applying herbicides as part of this contract.
5. Drift Control Plan.
6. Spill Control and Prevention Plans, including a list of equipment to be used.
7. A follow up complaint procedure. Each damage complain shall be investigated promptly by the Contractor and a written summary report of each incident shall be submitted to the Program Manager.

4.2 Meetings

The Contractor must attend the following meetings:

- The Pre-Bid Meeting.
- The Contractor Must meet with the Program Manager no later than 10 days after the award for a Kick-Off meeting as described in Project Plan, Section 4.1.
- The Contractor is also required to meet on a basis to be established by the Program Manger on an as needed basis. The purpose of the meeting is to review progress and for the

Program Manager to provide necessary guidance to the Contractor in solving issues that arise.

- The State may request other meetings, as it deems appropriate.

4.3 Reporting

The Contractor must submit, to the Program Manager, a written report at the end of each week:

The report shall include the following information:

- (a) The name and EPA registration number of the pesticide applied.
- (b) Concentration of the pesticide applied.
- (c) The amount of pesticide end use dilution applied.
- (d) The target pest, purpose, or crop site.
- (e) The date the pesticide was applied.
- (f) The address or location of pesticide application.
- (g) The method and the rate of application.

Copies of all product labels and MSDS sheets should be supplied with all materials are to be used throughout the course of the contract and are to be submitted to the Program Manager each year by March 31st. (Except for year one.)

5. Ordering

5.1 Authorizing Document

The appropriate authorizing document for the Contract will be a State-Issued Purchase Order, which must be approved by the Program Manager to order any deliverables under the Contract.

All orders are subject to the terms and conditions of the Contract. Exact quantities to be purchased are unknown, however, the Contractor must furnish all such materials and services as may be ordered during the Contract period. Quantities specified, if any, are estimates based on prior purchases, and the State is not obligated to purchase in these quantities.

6. Invoice and Payment

The agency will use abide by the invoice language defined in Terms of Payment in the Standard Contract.

6.1 Invoice Requirements

All invoices submitted to the State must include: (a) date; (b) purchase order; (c) quantity; (d) description of the Contract Activities; (e) unit price; (f) shipping cost (if any); and (g) total price. Overtime, holiday pay, and travel expenses will not be paid.

6.2 Payment Methods

The State will make payment for Contract Activities via Electronic Funds Transfer (EFT).

As required by MCL 18.1283, the Contractor must electronically register with the State at www.michigan.gov/cpexpress to receive EFT payments.

North Region Roadside Spraying on Limited Access Highways

**EXHIBIT C
PRICING**

ITEM #	DESCRIPTION OF SERVICES	UNIT OF MEASURE	ESTIMATED ANNUAL QUANTITIES	PRICE PER UNIT OF MEASURE	TOTAL PRICE PER YEAR
001	Spraying – I-75 (Spring Year 1, Fall Year 2,)	ACRE	1,516	31.48	\$ 47,723.68
002	Spraying – US-127 (Fall Year 1, Spring Year 2,)	ACRE	347	31.48	\$10,923.56
003	Spraying – US-131 (Fall Year 1, Spring Year 2,)	ACRE	560	31.48	\$17,628.80
ANNUAL COST				\$76,276.04	
2 YEAR COST				\$152,552.08	

Quick Payment Terms:

The bidder must check one box below:

☒ The bidder will offer a quick payment discount of 2% off an invoice if paid within 15 Days from the State's receipt of the invoice or delivery of the Deliverable(s), whichever is later.

☐ No quick payment discount will be offered.

Village Green

1616 Tech Dr. Bay City, MI 48706 989-667-0023

Supervisor: Bob Walsh 989-239-4211

Applicators:

Robert J. Walsh:	C004780051	Ex: 12/31/2017
Dale Furister:	C004020219	Ex: 12/31/2017
Brandon Walsh:	C002120139	Ex: 12/31/2015
Ignacio Saldavar:	C004030051	Ex: 12/31/2015
Chad Jarvis	C004150203	Ex: 12/31/2018

Village Green

Vegetation Control Equipment List

1. 1998 International 4900 w/1000 gal. sprayer (Raven injector system)
2. 1996 International 4900 w/1000 gal. sprayer (Raven injector system)
3. 2006 International 4300 w/1000 gal. sprayer (Raven Injection system)
4. 2001 International 4700 w/1250 gallon tank (water truck)



STATE OF MICHIGAN

STANDARD CONTRACT TERMS

This STANDARD CONTRACT ("Contract") is agreed to between the State of Michigan (the "State") and Village Green ("Contractor"), Michigan Corporation. This Contract is effective on June 15, 2015 ("Effective Date"), and unless terminated, expires on June 14, 2017.

The parties agree as follows:

1. **Duties of Contractor.** Contractor must perform the services and provide the deliverables described in **Exhibit A – Statement of Work** (the "Contract Activities"). An obligation to provide delivery of any commodity is considered a service and is a Contract Activity.

Contractor must furnish all labor, equipment, materials, and supplies necessary for the performance of the Contract Activities, and meet operational standards, unless otherwise specified in Exhibit A.

Contractor must: (a) perform the Contract Activities in a timely, professional, safe, and workmanlike manner consistent with standards in the trade, profession, or industry; (b) meet or exceed the performance and operational standards, and specifications of the Contract; (c) provide all Contract Activities in good quality, with no material defects; (d) not interfere with the State's operations; (e) obtain and maintain all necessary licenses, permits or other authorizations necessary for the performance of the Contract; (f) cooperate with the State, including the State's quality assurance personnel, and any third party to achieve the objectives of the Contract; (g) return to the State any State-furnished equipment or other resources in the same condition as when provided when no longer required for the Contract; (h) not make any media releases without prior written authorization from the State; (i) assign to the State any claims resulting from state or federal antitrust violations to the extent that those violations concern materials or services supplied by third parties toward fulfillment of the Contract; (j) comply with all State physical and IT security policies and standards which will be made available upon request; and (k) provide the State priority in performance of the Contract except as mandated by federal disaster response requirements. Any breach under this paragraph is considered a material breach.

Contractor must also be clearly identifiable while on State property by wearing identification issued by the State, and clearly identify themselves whenever making contact with the State.

2. **Notices.** All notices and other communications required or permitted under this Contract must be in writing and will be considered given and received: (a) when verified by written receipt if sent by courier; (b) when actually received if sent by mail without verification of receipt; or (c) when verified by automated receipt or electronic logs if sent by facsimile or email.

If to State:	If to Contractor:
Mark Morrison 425 W. Ottawa P.O. Box 30050 Lansing, MI 48909 MorrisonM@michigan.gov 517-241-2343	Village Green 1616 Tech Dr. Bay City, MI 48706 Vgreen2222@aol.com 989-671-2300

3. **Contract Administrator.** The Contract Administrator for each party is the only person authorized to modify any terms and conditions of this Contract (each a "Contract Administrator"):

State	Contractor:
Mark Morrison 425 W. Ottawa P.O. Box 30050 Lansing, MI 48909 MorrisonM@michigan.gov 517-241-2343	Village Green 1616 Tech Dr. Bay City, MI 48706 Vgreen2222@aol.com 989-671-2300

4. **Program Manager.** The Program Manager for each party will monitor and coordinate the day-to-day activities of the Contract (each a "Program Manager"):

State:	Contractor:
Bryan Schnetzler MDOT, North Region 1088 M32 East Gaylord, MI 49735 schnetzlerb@michigan.gov (989) 464-6440	Village Green 1616 Tech Dr. Bay City, MI 48706 Vgreen2222@aol.com 989-671-2300

5. **Performance Guarantee.** Contractor must at all times have financial resources sufficient, in the opinion of the State, to ensure performance of the Contract and must provide proof upon request. The State may require a performance bond (as specified in Exhibit A) if, in the opinion of the State, it will ensure performance of the Contract.
6. **Insurance Requirements.** Contractor must maintain the insurances identified below and is responsible for all deductibles. All required insurance must: (a) protect the State from claims that may arise out of, are alleged to arise out of, or result from Contractor's or a subcontractor's performance; (b) be primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State; and (c) be provided by an company with an A.M. Best rating of "A" or better and a financial size of VII or better.

Insurance Type	Additional Requirements
Commercial General Liability Insurance	
<u>Minimal Limits:</u> \$1,000,000 Each Occurrence Limit \$1,000,000 Personal & Advertising Injury Limit \$2,000,000 General Aggregate Limit \$2,000,000 Products/Completed Operations <u>Deductible Maximum:</u> \$50,000 Each Occurrence	Contractor must have their policy endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds using endorsement CG 20 10 11 85, or both CG 2010 07 04 and CG 2037 07 0.
Umbrella or Excess Liability Insurance	
<u>Minimal Limits:</u> \$5,000,000 General Aggregate	Contractor must have their policy endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds.
Automobile Liability Insurance	
<u>Minimal Limits:</u> \$1,000,000 Per Occurrence	
Workers' Compensation Insurance	

<u>Minimal Limits:</u> Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.
Employers Liability Insurance	
<u>Minimal Limits:</u> \$500,000 Each Accident \$500,000 Each Employee by Disease \$500,000 Aggregate Disease.	

8. **Reserved.**

9. **Independent Contractor.** Contractor is an independent contractor and assumes all rights, obligations and liabilities set forth in this Contract. Contractor, its employees, and agents will not be considered employees of the State. No partnership or joint venture relationship is created by virtue of this Contract. Contractor, and not the State, is responsible for the payment of wages, benefits and taxes of Contractor's employees and any subcontractors. Prior performance does not modify Contractor's status as an independent contractor.
10. **Subcontracting.** Contractor may not delegate any of its obligations under the Contract without the prior written approval of the State. Contractor must notify the State at least 90 calendar days before the proposed delegation, and provide the State any information it requests to determine whether the delegation is in its best interest. If approved, Contractor must: (a) be the sole point of contact regarding all contractual matters, including payment and charges for all Contract Activities; (b) make all payments to the subcontractor; and (c) incorporate the terms and conditions contained in this Contract in any subcontract with a subcontractor. Contractor remains responsible for the completion of the Contract Activities, compliance with the terms of this Contract, and the acts and omissions of the subcontractor. The State, in its sole discretion, may require the replacement of any subcontractor.
11. **Staffing.** The State's Contract Administrator may require Contractor to remove or reassign personnel by providing a notice to Contractor.
12. **Background Checks.** Upon request, Contractor must perform background checks on all employees and subcontractors and its employees prior to their assignment. The scope is at the discretion of the State and documentation must be provided as requested. Contractor is responsible for all costs associated with the requested background checks. The State, in its sole discretion, may also perform background checks.
13. **Assignment.** Contractor may not assign this Contract to any other party without the prior approval of the State. Upon notice to Contractor, the State, in its sole discretion, may assign in whole or in part, its rights or responsibilities under this Contract to any other party. If the State determines that a novation of the Contract to a third party is necessary, Contractor will agree to the novation, provide all necessary documentation and signatures, and continue to perform, with the third party, its obligations under the Contract.
14. **Change of Control.** Contractor will notify, at least 90 calendar days before the effective date, the State of a change in Contractor's organizational structure or ownership. For purposes of this Contract, a change in control means any of the following: (a) a sale of more than 50% of Contractor's stock; (b) a sale of substantially all of Contractor's assets; (c) a change in a majority of Contractor's board members; (d) consummation of a merger or consolidation of Contractor with any other entity; (e) a change in ownership through a transaction or series of transactions; (f) or the board (or the stockholders) approves a plan of complete liquidation. A change of control does not include any consolidation or merger effected exclusively to change the domicile of Contractor, or any transaction or series of transactions principally for bona fide equity financing purposes.

In the event of a change of control, Contractor must require the successor to assume this Contract and all of its obligations under this Contract.

15. **Ordering.** Contractor is not authorized to begin performance until receipt of authorization as identified in Exhibit A.
16. **Acceptance.** Contract Activities are subject to inspection and testing by the State within 30 calendar days of the State's receipt of them ("**State Review Period**"), unless otherwise provided in Exhibit A. If the Contract Activities are not fully accepted by the State, the State will notify Contractor by the end of the State Review Period that either: (a) the Contract Activities are accepted, but noted deficiencies must be corrected; or (b) the Contract Activities are rejected. If the State finds material deficiencies, it may: (i) reject the Contract Activities without performing any further inspections; (ii) demand performance at no additional cost; or (iii) terminate this Contract in accordance with Section 23, Termination for Cause.

Within 10 business days from the date of Contractor's receipt of notification of acceptance with deficiencies or rejection of any Contract Activities, Contractor must cure, at no additional cost, the deficiency and deliver unequivocally acceptable Contract Activities to the State. If acceptance with deficiencies or rejection of the Contract Activities impacts the content or delivery of other non-completed Contract Activities, the parties' respective Program Managers must determine an agreed to number of days for re-submission that minimizes the overall impact to the Contract. However, nothing herein affects, alters, or relieves Contractor of its obligations to correct

deficiencies in accordance with the time response standards set forth in this Contract.

If Contractor is unable or refuses to correct the deficiency within the time response standards set forth in this Contract, the State may cancel the order in whole or in part. The State, or a third party identified by the State, may perform the Contract Activities and recover the difference between the cost to cure and the Contract price plus an additional 10% administrative fee.

17. **Delivery.** Contractor must deliver all Contract Activities F.O.B. destination, within the State premises with transportation and handling charges paid by Contractor, unless otherwise specified in Exhibit A. All containers and packaging becomes the State's exclusive property upon acceptance.
18. **Risk of Loss and Title.** Until final acceptance, title and risk of loss or damage to Contract Activities remains with Contractor. Contractor is responsible for filing, processing, and collecting all damage claims. The State will record and report to Contractor any evidence of visible damage. If the State rejects the Contract Activities, Contractor must remove them from the premises within 10 calendar days after notification of rejection. The risk of loss of rejected or non-conforming Contract Activities remains with Contractor. Rejected Contract Activities not removed by Contractor within 10 calendar days will be deemed abandoned by Contractor, and the State will have the right to dispose of it as its own property. Contractor must reimburse the State for costs and expenses incurred in storing or effecting removal or disposition of rejected Contract Activities.
19. **Warranty Period.** The warranty period, if applicable, for Contract Activities is a fixed period commencing on the date specified in Exhibit A. If the Contract Activities do not function as warranted during the warranty period the State may return such non-conforming Contract Activities to the Contractor for a full refund.
20. **Terms of Payment.** Invoices must conform to the requirements communicated from time-to-time by the State. All undisputed amounts are payable within 45 days of the State's receipt. Contractor may only charge for Contract Activities performed as specified in Exhibit A. Invoices must include an itemized statement of all charges. The State is exempt from State sales tax for direct purchases and may be exempt from federal excise tax, if Services purchased under this Agreement are for the State's exclusive use. Notwithstanding the foregoing, all prices are inclusive of taxes, and Contractor is responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable by the State under this Contract.

The State has the right to withhold payment of any disputed amounts until the parties agree as to the validity of the disputed amount. The State will notify Contractor of any dispute within a reasonable time. Payment by the State will not constitute a waiver of any rights as to Contractor's continuing obligations, including claims for deficiencies or substandard Contract Activities. Contractor's acceptance of final payment by the State constitutes a waiver of all claims by Contractor against the State for payment under this Contract, other than those claims previously filed in writing on a timely basis and still disputed.

The State will only disburse payments under this Contract through Electronic Funds Transfer (EFT). Contractor must register with the State at <http://www.michigan.gov/cpexpress> to receive electronic fund transfer payments. If Contractor does not register, the State is not liable for failure to provide payment.

Without prejudice to any other right or remedy it may have, the State reserves the right to set off at any time any amount then due and owing to it by Contractor against any amount payable by the State to Contractor under this Contract.

21. **Liquidated Damages.** Liquidated damages, if applicable, will be assessed as described in Exhibit A.
22. **Stop Work Order.** The State may suspend any or all activities under the Contract at any time. The State will provide Contractor a written stop work order detailing the suspension. Contractor must comply with the stop work order upon receipt. Within 90 calendar days, or any longer period agreed to by Contractor, the State will either: (a) issue a notice authorizing Contractor to resume work, or (b) terminate the Contract or purchase order. The State will not pay for Contract Activities, Contractor's lost profits, or any additional compensation during a stop work period.
23. **Termination for Cause.** The State may terminate this Contract for cause, in whole or in part, if Contractor, as determined by the State: (a) endangers the value, integrity, or security of any location, data, or personnel; (b) becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed against it by any creditor; (c) engages in any conduct that may expose the State to liability; (d) breaches any of its material duties or obligations; or (e) fails to cure a breach within the time stated in a notice of breach. Any reference to specific breaches being material breaches within this Contract will not be construed to mean that other breaches are not material.

If the State terminates this Contract under this Section, the State will issue a termination notice specifying whether Contractor must: (a) cease performance immediately, or (b) continue to perform for a specified period. If it is later determined that Contractor was not in breach of the Contract, the termination will be deemed to have been a Termination for Convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in Section 24, Termination for Convenience.

The State will only pay for amounts due to Contractor for Contract Activities accepted by the State on or before the date of termination, subject to the State's right to set off any amounts owed by the Contractor for the State's reasonable costs in terminating this Contract. The Contractor must pay all reasonable costs incurred by the State in terminating this Contract for cause, including administrative costs, attorneys' fees, court costs, transition costs, and any costs the State incurs to procure the Contract Activities from other sources.

24. Termination for Convenience. The State may immediately terminate this Contract in whole or in part without penalty and for any reason, including but not limited to, appropriation or budget shortfalls. The termination notice will specify whether Contractor must: (a) cease performance of the Contract Activities immediately, or (b) continue to perform the Contract Activities in accordance with Section 25, Transition Responsibilities. If the State terminates this Contract for convenience, the State will pay all reasonable costs, as determined by the State, for State approved Transition Responsibilities.

25. Transition Responsibilities. Upon termination or expiration of this Contract for any reason, Contractor must, for a period of time specified by the State (not to exceed 90 calendar days), provide all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the Contract Activities to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Contract Activities to the State or its designees. Such transition assistance may include, but is not limited to: (a) continuing to perform the Contract Activities at the established Contract rates; (b) taking all reasonable and necessary measures to transition performance of the work, including all applicable Contract Activities, training, equipment, software, leases, reports and other documentation, to the State or the State's designee; (c) taking all necessary and appropriate steps, or such other action as the State may direct, to preserve, maintain, protect, or return to the State all materials, data, property, and confidential information provided directly or indirectly to Contractor by any entity, agent, vendor, or employee of the State; (d) transferring title in and delivering to the State, at the State's discretion, all completed or partially completed deliverables prepared under this Contract as of the Contract termination date; and (e) preparing an accurate accounting from which the State and Contractor may reconcile all outstanding accounts (collectively, "Transition Responsibilities"). This Contract will automatically be extended through the end of the transition period.

26. General Indemnification. Contractor must defend, indemnify and hold the State, its departments, divisions, agencies, offices, commissions, officers, and employees harmless, without limitation, from and against any and all actions, claims, losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), arising out of or relating to: (a) any breach by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable) of any of the promises, agreements, representations, warranties, or insurance requirements contained in this Contract; (b) any infringement, misappropriation, or other violation of any intellectual property right or other right of any third party; (c) any bodily injury, death, or damage to real or tangible personal property occurring wholly or in part due to action or inaction by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable); and (d) any acts or omissions of Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable).

The State will notify Contractor in writing if indemnification is sought; however, failure to do so will not relieve Contractor, except to the extent that Contractor is materially prejudiced. Contractor must, to the satisfaction of the State, demonstrate its financial ability to carry out these obligations.

The State is entitled to: (i) regular updates on proceeding status; (ii) participate in the defense of the proceeding; (iii) employ its own counsel; and to (iv) retain control of the defense if the State deems necessary. Contractor will not, without the State's written consent (not to be unreasonably withheld), settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any claim, action, or proceeding. To the extent that any State employee, official, or law may be involved or challenged, the State may, at its own expense, control the defense of that portion of the claim.

Any litigation activity on behalf of the State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. An attorney designated to represent the State may not do so until approved by the Michigan Attorney General and appointed as a Special Assistant Attorney General.

27. Infringement Remedies. If, in either party's opinion, any piece of equipment, software, commodity, or service supplied by Contractor or its subcontractors, or its operation, use or reproduction, is likely to become the subject

of a copyright, patent, trademark, or trade secret infringement claim, Contractor must, at its expense: (a) procure for the State the right to continue using the equipment, software, commodity, or service, or if this option is not reasonably available to Contractor, (b) replace or modify the same so that it becomes non-infringing; or (c) accept its return by the State with appropriate credits to the State against Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.

28. **Limitation of Liability.** The State is not liable for consequential, incidental, indirect, or special damages, regardless of the nature of the action.
29. **Disclosure of Litigation, or Other Proceeding.** Contractor must notify the State within 14 calendar days of receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "Proceeding") involving Contractor, a subcontractor, or an officer or director of Contractor or subcontractor, that arises during the term of the Contract, including: (a) a criminal Proceeding; (b) a parole or probation Proceeding; (c) a Proceeding under the Sarbanes-Oxley Act; (d) a civil Proceeding involving: (1) a claim that might reasonably be expected to adversely affect Contractor's viability or financial stability; or (2) a governmental or public entity's claim or written allegation of fraud; or (e) a Proceeding involving any license that Contractor is required to possess in order to perform under this Contract.
30. **Non-Disclosure of Confidential Information.** The parties acknowledge that each party may be exposed to or acquire communication or data of the other party that is confidential, privileged communication not intended to be disclosed to third parties. The provisions of this Section survive the termination of this Contract.
 - a. **Meaning of Confidential Information.** For the purposes of this Contract, the term "Confidential Information" means all information and documentation of a party that: (a) has been marked "confidential" or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked "confidential" or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked "confidential" or with words of similar meaning; and, (c) should reasonably be recognized as confidential information of the disclosing party. The term "Confidential Information" does not include any information or documentation that was: (a) subject to disclosure under the Michigan Freedom of Information Act (FOIA); (b) already in the possession of the receiving party without an obligation of confidentiality; (c) developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party's proprietary rights; (d) obtained from a source other than the disclosing party without an obligation of confidentiality; or, (e) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through, or on behalf of, the receiving party). For purposes of this Contract, in all cases and for all matters, State Data is deemed to be Confidential Information.
 - b. **Obligation of Confidentiality.** The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Contract or to use such Confidential Information for any purposes whatsoever other than the performance of this Contract. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Disclosure to a subcontractor is permissible where: (a) use of a subcontractor is authorized under this Contract; (b) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the subcontractor's responsibilities; and (c) Contractor obligates the subcontractor in a written contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor or any subcontractor may be required to execute a separate agreement to be bound by the provisions of this Section.
 - c. **Cooperation to Prevent Disclosure of Confidential Information.** Each party must use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party must advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.
 - d. **Remedies for Breach of Obligation of Confidentiality.** Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of the State, at the sole election of

the State, the immediate termination, without liability to the State, of this Contract or any Statement of Work corresponding to the breach or threatened breach.

- e. **Surrender of Confidential Information upon Termination.** Upon termination of this Contract or a Statement of Work, in whole or in part, each party must, within 5 calendar days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which are in such party's possession, custody, or control; provided, however, that Contractor must return State Data to the State following the timeframe and procedure described further in this Contract. Should Contractor or the State determine that the return of any non-State Data Confidential Information is not feasible, such party must destroy the non-State Data Confidential Information and must certify the same in writing within 5 calendar days from the date of termination to the other party.

Data Privacy and Information Security.

- 31. **Records Maintenance, Inspection, Examination, and Audit.** The State or its designee may audit Contractor to verify compliance with this Contract. Contractor must retain, and provide to the State or its designee and the auditor general upon request, all financial and accounting records related to the Contract through the term of the Contract and for 4 years after the latter of termination, expiration, or final payment under this Contract or any extension ("Audit Period"). If an audit, litigation, or other action involving the records is initiated before the end of the Audit Period, Contractor must retain the records until all issues are resolved.

Within 10 calendar days of providing notice, the State and its authorized representatives or designees have the right to enter and inspect Contractor's premises or any other places where Contract Activities are being performed, and examine, copy, and audit all records related to this Contract. Contractor must cooperate and provide reasonable assistance. If any financial errors are revealed, the amount in error must be reflected as a credit or debit on subsequent invoices until the amount is paid or refunded. Any remaining balance at the end of the Contract must be paid or refunded within 45 calendar days.

This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.

- 32. **Warranties and Representations.** Contractor represents and warrants: (a) Contractor is the owner or licensee of any Contract Activities that it licenses, sells, or develops and Contractor has the rights necessary to convey title, ownership rights, or licensed use; (b) all Contract Activities are delivered free from any security interest, lien, or encumbrance and will continue in that respect; (c) the Contract Activities will not infringe the patent, trademark, copyright, trade secret, or other proprietary rights of any third party; (d) Contractor must assign or otherwise transfer to the State or its designee any manufacturer's warranty for the Contract Activities; (e) the Contract Activities are merchantable and fit for the specific purposes identified in the Contract; (f) the Contract signatory has the authority to enter into this Contract; (g) all information furnished by Contractor in connection with the Contract fairly and accurately represents Contractor's business, properties, finances, and operations as of the dates covered by the information, and Contractor will inform the State of any material adverse changes; and (h) all information furnished and representations made in connection with the award of this Contract is true, accurate, and complete, and contains no false statements or omits any fact that would make the information misleading. A breach of this Section is considered a material breach of this Contract, which entitles the State to terminate this Contract under Section 23, Termination for Cause.
- 33. **Conflicts and Ethics.** Contractor will uphold high ethical standards and is prohibited from: (a) holding or acquiring an interest that would conflict with this Contract; (b) doing anything that creates an appearance of impropriety with respect to the award or performance of the Contract; (c) attempting to influence or appearing to influence any State employee by the direct or indirect offer of anything of value; or (d) paying or agreeing to pay any person, other than employees and consultants working for Contractor, any consideration contingent upon the award of the Contract. Contractor must immediately notify the State of any violation or potential violation of these standards. This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.
- 34. **Compliance with Laws.** Contractor must comply with all federal, state and local laws, rules and regulations.
- 35. **Nondiscrimination.** Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, Contractor and its subcontractors agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race,

color, religion, national origin, age, sex, height, weight, marital status, or mental or physical disability. Breach of this covenant is a material breach of this Contract.

36. **Unfair Labor Practice.** Under MCL 423.324, the State may void any Contract with a Contractor or subcontractor who appears on the Unfair Labor Practice register compiled under MCL 423.322.
37. **Governing Law.** This Contract is governed, construed, and enforced in accordance with Michigan law, excluding choice-of-law principles, and all claims relating to or arising out of this Contract are governed by Michigan law, excluding choice-of-law principles. Any dispute arising from this Contract must be resolved in Michigan Court of Claims. Contractor consents to venue in Ingham County, and waives any objections, such as lack of personal jurisdiction or *forum non conveniens*. Contractor must appoint agents in Michigan to receive service of process.
38. **Non-Exclusivity.** Nothing contained in this Contract is intended nor will be construed as creating any requirements contract with Contractor. This Contract does not restrict the State or its agencies from acquiring similar, equal, or like Contract Activities from other sources.
39. **Force Majeure.** Neither party will be in breach of this Contract because of any failure arising from any disaster or acts of god that are beyond their control and without their fault or negligence. Each party will use commercially reasonable efforts to resume performance. Contractor will not be relieved of a breach or delay caused by its subcontractors. If immediate performance is necessary to ensure public health and safety, the State may immediately contract with a third party.
40. **Dispute Resolution.** The parties will endeavor to resolve any Contract dispute in accordance with this provision. The dispute will be referred to the parties' respective Contract Administrators or Program Managers. Such referral must include a description of the issues and all supporting documentation. The parties must submit the dispute to a senior executive if unable to resolve the dispute within 15 business days. The parties will continue performing while a dispute is being resolved, unless the dispute precludes performance. A dispute involving payment does not preclude performance.

Litigation to resolve the dispute will not be instituted until after the dispute has been elevated to the parties' senior executive and either concludes that resolution is unlikely, or fails to respond within 15 business days. The parties are not prohibited from instituting formal proceedings: (a) to avoid the expiration of statute of limitations period; (b) to preserve a superior position with respect to creditors; or (c) where a party makes a determination that a temporary restraining order or other injunctive relief is the only adequate remedy. This Section does not limit the State's right to terminate the Contract.
41. **Media Releases.** News releases (including promotional literature and commercial advertisements) pertaining to the Contract or project to which it relates must not be made without prior written State approval, and then only in accordance with the explicit written instructions of the State.
42. **Website Incorporation.** The State is not bound by any content on Contractor's website unless expressly incorporated directly into this Contract.
43. **Order of Precedence.** In the event of a conflict between the terms and conditions of the Contract, the exhibits, a purchase order, or an amendment, the order of precedence is: (a) the purchase order; (b) the amendment; (c) Exhibit A; (d) any other exhibits; and (e) the Contract.
44. **Severability.** If any part of this Contract is held invalid or unenforceable, by any court of competent jurisdiction, that part will be deemed deleted from this Contract and the severed part will be replaced by agreed upon language that achieves the same or similar objectives. The remaining Contract will continue in full force and effect.
45. **Waiver.** Failure to enforce any provision of this Contract will not constitute a waiver.
46. **Survival.** The provisions of this Contract that impose continuing obligations, including warranties and representations, termination, transition, insurance coverage, indemnification, and confidentiality, will survive the expiration or termination of this Contract.
47. **Entire Contract and Modification.** This Contract is the entire agreement and replaces all previous agreements between the parties for the Contract Activities. This Contract may not be amended except by signed agreement between the parties (a "Contract Change Notice").